

Circuit Sponsors Appellate Practice Workshop

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By OCE Public Information Office



Senior Circuit Judge Betty Fletcher gestures while making a point during discussion of how to prepare for oral arguments. The panel also included, from left, moderator Kathleen S. Morris, Circuit Judge Michael Daly Hawkins and attorneys Lucas Guttentag and Douglas R. Young.

Attorneys with limited experience in appellate practice recently were offered a unique opportunity to find out what they should expect in a federal appeals court and what will be expected of them.

The occasion was the Ninth Circuit Court of Appeals' Appellate Practice Workshop, held Oct. 27-28 at the Court of Appeals in San Francisco. Co-sponsored by the Northern California Chapter of the Federal Bar Association, the workshop attracted some 60 attorneys, many of them solo practitioners or lawyers in small firms, who were looking to sharpen their skills in writing briefs and making oral arguments. The faculty included no fewer than nine circuit judges, a number of highly experienced appellate attorneys, the clerk of court and its chief staff attorney.

"This was a very worthwhile investment of time for everyone involved," observed Ninth Circuit Chief Judge Mary M. Schroeder, who opened the program with welcoming remarks. "Helping lawyers achieve greater clarity and conciseness in briefs and arguments not only benefits their clients, it greatly assists the court in keeping up with a growing caseload."

The workshop focused on a case drawn from an actual appellate proceeding involving an appeal by an illegal alien whose asylum claim was rejected by the Board of Immigration Appeals (BIA). Participants were provided a short list of authorities along with a 95-page administrative record of the proceedings. Each attorney was required to prepare and submit a brief beforehand seeking

to reverse or affirm the BIA decision (a model appellant brief was provided for those assigned to write an appellee brief). The exercise focused on effective writing rather than research with briefs limited to 10 pages and 4,000 words. Judges or attorneys provided each participant with a personal critique of their brief.

Brief writing was discussed by two panels of judges and attorneys. The first, moderated by Sharon L. O'Grady of Pillsbury Winthrop, focused on persuasive writing, reply briefs, ethics in writing briefs, standards of review and statutory interpretation. Participants included Judges Susan P. Graber of Portland and Richard C. Tallman of Seattle, and San Francisco attorneys Steven A. Hirsch of Kecker & Van Nest; Karin A. Kramer of Lieff Cabraser Heimann & Bernstein; and Marc Van Der Hout of Van Der Hout, Brigagliano & Nightingale.

Another panel addressed recurring or serious problems observed in the briefs submitted by program participants. Moderated by Scott R. Raber of Newton Kastner & Remmel of Mountain View, Calif., the panel included Judges William A. Fletcher and Marsha S. Berzon, both of San Francisco; San Francisco attorneys Paul D. Fogel of Reed Smith and solo practitioner Robert B. Jobe; and Hannah Horsley, chief of the appellate unit in the U.S. Attorney's Office for the Northern District of California.

The second day of the program focused on oral arguments, beginning with a panel discussion on preparation and presentation, handling questions and ethical issues. Panelists included Senior Judge Betty B. Fletcher of Seattle and Judge Michael Daly Hawkins of Phoenix; attorneys Lucas E. Guttentag of the American Civil Liberties Union's Immigrants Rights Project in Oakland, Calif., and Douglas R. Young of Farella, Braun & Martel in San Francisco. Kathleen S. Morris of the San Francisco City Attorney's Office moderated.

Judges Fletcher and Hawkins offered helpful advice in many areas, such as Judge Hawkins' admonition to listen carefully to questions posed by the panel. Attorneys all too often answer the question they want to hear, not the one that came from the bench, he noted. Both judges urged attorneys to not pass on oral argument. Noting the many cases that never reach oral argument, Judge Fletcher said attorneys should treat the opportunity as a privilege.

The program culminated with a model oral argument before Judges Berzon, Alex Kozinski of Pasadena and Stephen R. Reinhardt of Los Angeles. Arguing on behalf of the appellant was San Francisco attorney Sandy Svetcov of Lerach Coughlin Stoia & Robbins, while Professor Rory Little of the University of California's Hastings College of the Law argued for the appellee. Laurel Beeler, an assistant U.S. Attorney in San Francisco moderated the discussion, which was meant to provide an insider's perspective, including the panel's expectations and objectives prior to the argument. Afterward, the participants listened as judges conducted their post-argument conference and reached a decision.

Participants also received brief presentations on the inner workings of the court from Clerk Cathy Catterson; her chief deputy clerk and senior staff attorney, Molly Dwyer; Appellate Commissioner Peter Shaw; and Circuit Mediator David Lombardi. The session helped participants learn about the nuts-and-bolts of administering the nation's busiest appellate court.